

BOROUGH OF NEW PROVIDENCE

BOARD OF ADJUSTMENT

RESOLUTION

WHEREAS, David and Margaret McCarthy are the owners of 95 Pine Way, New Providence, New Jersey (the "Applicants"), and have applied to the Zoning Board of Adjustment of the Borough of New Providence (the "Board") for a variance pursuant to N.J.S.A. 40:55D-70(c) for relief from the Borough's zoning ordinance to permit the continued use of the existing circular driveway, where only one curb cut is allowed. The proposed driveway is .5 feet from the property line whereas 6 feet is the minimum required. The proposed curb cut is 21.5 feet whereas 15 feet is the maximum permitted. The property is designated as Block 117, Lot 3, on the Borough Tax Map, and lies in the R-2 Single Family Residential Zone; and

WHEREAS, the Board has reviewed the application, testimony and exhibits presented by the Applicants at the hearing conducted on March 18, 2013; and

WHEREAS, the Board has made the following findings of fact and drawn the following conclusions of law:

FINDINGS OF FACT

1. The Applicants, David and Margaret McCarthy, are the owners of 95 Pine Way, New Providence, New Jersey. The property is designated as Block 117, Lot 3 on the Borough Tax Map, and lies in the R-1 Single Family Residential District.

2. The Applicants intend to permit the continued use of the existing circular driveway. The circular driveway is not permitted as only one curb cut is allowed. The

existing driveway is in violation of the curb cut limitations set forth at Chapter 310, Article V, Section 310- 310-20(2).

3. Margaret McCarthy was sworn in. Vince Vyzas, Esq., of Vyzas & Associates, appeared on behalf of the Applicants. Mr. Vyzas stated that Mr. and Mrs. McCarthy sold the house and the new owners have provided the McCarthys permission to proceed with the application. Mr. Vyzas stated that the zoning ordinance only permits one curb cut per property. In 1999, the McCarthys hired Nicholas Grace to create a circular driveway. The McCarthys relied on good faith that the contractor would obtain the necessary permits. They were unaware that a variance was required for a circular driveway.

4. The driveway has been there for 13 years without any complaints and was installed to provide safe ingress/egress for the McCarthy's 90-year old mothers. Pine Way is a cut-through street and cars are often parked on both sides of the street rendering it a one-lane road at times. There are a number of other circular driveways on Pine Way. The circular driveway contributes to the aesthetics of the neighborhood and enhances the home and real estate values.

5. The Board questioned Mrs. McCarthy. Mrs. McCarthy stated that photographs distributed to the Board show Pine Way on two occasions when the neighbors were having parties so there are not usually that many cars parked on the street. Eight cars can be parked on the circular driveway. The McCarthys have never had any complaints about the driveway in the 13 years that it has been there. The driveway went straight back when they bought the house in 1998 and was gravel. The house across the street had a circular driveway which is what gave the McCarthys the idea for their

driveway. The snow is not pushed out onto the street. They parked their cars in the garage at night and never parked them in the driveway overnight. If they did not have the circular driveway, they would have to back out of the driveway into the street which is a long way to back out.

6. The Board did not find the proposed improvement to have any adverse impact on the neighbors and found that the driveway design improved safety.

7. Karen Pfister, 31 Pine Way, was sworn in. She supports the application. No one else appeared to testify in favor of or in opposition to the application.

CONCLUSIONS OF LAW

1. The driveway as proposed does not comply with the requirements for this lot as established by Chapter 310, Article V, Section 310-20(2). The request to permit the existing circular driveway requires the granting of a "c" variance pursuant to N.J.S.A. 40:55D-70(c).

2. Through the testimony and exhibits presented, the Applicants have established that the application:

(a) relates to a specific piece of property, namely the Applicants' premises;

(b) that the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements, namely the promotion of the public health, safety, morals and general welfare and the preservation of neighborhood character and conservation of neighborhood values;

(c) that the variance can be granted without substantial detriment to the public good;

(d) that the benefits of the deviation would substantially outweigh any detriment and that the variance will not substantially impair the intent and purpose of the zone plan and ordinance.

NOW, THEREFORE, BE IT RESOLVED, on this 18th day of March, 2013, that David and Margaret McCarthy's application for a "c" variance be and hereby is **GRANTED**, subject to the following conditions:

1. The driveway must be maintained strictly in accordance with the plans and testimony presented to the Board; and
2. The approval is subject to all other governmental approvals, including but not limited to compliance with the Borough's lot grading ordinance; and
3. The variances granted herein shall not constitute authority to engage in any construction which is not authorized by the Zoning Ordinance of the Borough of New Providence, except as expressly stated herein.

ROLL CALL VOTE

Those in Favor: Mr. Ammitzboll, Mr. Grob, Ms. Polesak, Mr. Wycko,
Mr. Ping, Mr. Hoefling and Mr. Nadelberg

Those Opposed: -----

The foregoing is a Resolution duly adopted by the Zoning Board of Adjustment of the Borough of New Providence at its meeting on April 15, 2013.

ATTEST:

Margaret Karenty
Secretary, Board of Adjustment

William B. Jodilly
Chairman, Board of Adjustment